

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment with respondent on the date or dates alleged?
- (2) Is claimant entitled to temporary total disability compensation from the filing of the first K-WC E-3 Application for Preliminary Hearing rather than from the time the second application was filed before the second preliminary hearing?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

This matter originally went to preliminary hearing on March 4, 1999. At that hearing, respondent admitted that claimant had suffered a fall on or about July 23, 1998. However, the main dispute involved the nature and extent of claimant's injury from that fall. A preliminary decision was issued by Judge Foerschler on March 8, 1999, finding that claimant did sustain a compensable injury while at work in the laundry room at the Marriott Hotel in Overland Park, Kansas, and that he had timely reported it to the management.

Judge Foerschler also ordered an examination of claimant by a competent back specialist to be chosen by respondent. No appeal was taken from that decision. A second preliminary hearing was held on July 13, 1999, at which time the only issue dealt with claimant's entitlement to temporary total disability compensation and, if ordered, when that temporary total disability compensation would begin.

K.S.A. 1998 Supp. 44-551 requires appeals from administrative law judges' decisions to be submitted to the Board upon written request within 10 days. As no appeal was filed within 10 days of the original March 8, 1999, order, no consideration will be given to the issues decided at that hearing.

The only issue raised at the July 13, 1999, preliminary hearing dealt with claimant's entitlement to temporary total disability compensation and, if ordered, when that benefit would begin. K.S.A. 1998 Supp. 44-534a and K.S.A. 1998 Supp. 44-551 restrict a party's right to appeal from preliminary hearings to certain jurisdictional issues. Under K.S.A. 1998 Supp. 44-551, it must be alleged that an administrative law judge exceeded his or her jurisdiction in granting or denying the benefits requested at preliminary hearing. K.S.A. 1998 Supp. 44-534a lists certain issues which are considered jurisdictional from a preliminary hearing decision, including whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply. Claimant's entitlement to medical treatment and temporary total disability compensation and when that temporary total disability is to begin pursuant to K.S.A. 1998 Supp. 44-534a are not issues which are appealable to the Board from a preliminary hearing order. As such, respondent's appeal of the award of temporary total disability compensation cannot be considered at this time and is dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the respondent's appeal in this matter is dismissed, and the orders of Administrative Law

Judge Robert H. Foerschler dated July 20, 1999, and March 8, 1999, remain in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS
D'Ambra M. Howard, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director